BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services	)	MB Docket No. 17-289
	)	
	)	

PETITION FOR RECONSIDERATION

Red Brennan Group ("Petitioner"), a California non-profit social welfare organization which offers, among other community services, a weekly radio broadcast on KCAA, hereby petitions for reconsideration, through its counsel, of the above-captioned Report and Order[1] (the "Order"). Public notice of the Report and Order was published in the Federal Register on August 28, 2018. Therefore, this Petition is timely filed pursuant to 47 U.S.C. § 405. While Petitioner did not participate in the underlying proceeding, consideration of the matters discussed below have significant public interest implications and did not appear to be considered by the Commission in adopting the program.[2]

In the Order, the Commission adopted an "incubator program" for the purpose of promoting competition and diversity in the broadcast industry. However, the incubator program is highly unlikely to achieve this goal, and represents poor policy decision-making, for multiple reasons.

First, it is difficult to comprehend how a policy that provides waivers of the Commission's multiple ownership rules could possibly promote competition, given that the multiple ownership rules have served as the primary structural safeguard to competition in the

[1] *Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, Report and Order, MB Docket No. 17-289 (rel. Aug. 3, 2018).
[2] *See* 47 C.F.R. § 1.429(b)(3).

broadcast industry since radio's earliest days. In fact, the Commission has restricted ownership in radio almost since the agency's inception in 1934, preventing one individual or entity from owning "too many" radio stations.[3] At that time, the Commission refused to issue broadcast licenses that would create radio duopolies within the same market and service band.[4] While the exact limits associated with media ownership have varied throughout different eras, the concept underlying the limits has endured to present day.

The timeless nature of media ownership limits can be attributed to one simple fact: they are the only proven method of promoting competition and diversity in the broadcast industry. Reducing the limits inevitably leads to industry consolidation, which, by its very nature, leaves fewer opportunities for new entrants to the market. Industry consolidation is also associated with various forms of anticompetitive behavior unconducive to diversity.[5]

The Commission has previously experimented with different policies aimed at promoting diversity in the broadcast industry, none of which have succeeded. The effect of these policies has been to allow industry players to game the system and exploit the rules for their personal gain, particularly where ownership limit waivers are involved. Consider, for example, the Commission's long-standing comparative hearing policies which favored applicants who had no other media interests and whose owners would work at the stations. After years of abuse and phony ownership structures set up solely to game the comparative evaluation system, the Court of Appeals threw out the whole program as demonstrably ineffective in achieving its stated

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[3] Loy A. Singleton & Steven C. Rockwell, *Silent Voices: Analyzing the FCC "Media Voices" Criteria Limiting Local Radio-Television Cross-Ownership*, 8 COMM. L. & POL'Y 385, 387 (2003) ("At its inception, the Communications Act of 1934 provided the [FCC] with authority to regulate concentrations of [media] ownership in the public interest.").

[4] *Genesee Radio Corp.*, 5 F.C.C. 183, 186 (1938)

[5] Gregory M. Prindle, *No Competition: How Radio Consolidation Has Diminished Diversity and Sacrificed Localism*, 14 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 279, 313-19 (2003).

diversity goals. Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992). There is no evidence that such policies actually promote diversity or competition.

In fact, the Third Circuit struck down such a policy for that very reason. In 2008 the Commission enacted a policy that enabled certain entities, whose eligibility was determined based on revenue, to abide by less restrictive media ownership and attribution rules, and more flexible licensing policies, than their counterparts. The Commission claimed that the measures would "be effective in creating new opportunities for a variety of small businesses and new entrants, including those owned by women and minorities."[6] The Third Circuit vacated the policy on the basis that that the Commission's revenue-based eligible entity definition was unlikely meet its goal of increasing broadcast ownership by minorities and women.[7]

The Order at issue in this Petition proceeds on similarly faulty logic. The new policy once again utilizes a revenue-based criterion for determining eligibility for incubated entities, claiming that providing support for low-revenue entities will lead to increased diversity in the broadcast industry. The Commission does not adequately explain how it makes the logical leap from supporting low-revenue broadcast licensees to promoting diversity. The concerns raised by the Third Circuit remain: minorities comprise 8.5% of commercial radio station owners that qualify as small businesses, but 7.78% of the commercial radio industry as a whole—a difference of less than 1%.[8]

The Order will also serve no benefit to competition. The Commission provides no empirical data or support for its assertion that a mentorship program will provide viable long-

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[6] *Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking*, FCC 07-217, 23 FCC Rcd 5922, 5927 (Mar. 5, 2008).
[7] *Prometheus Radio Project v. F.C.C.*, 652 F.3d 431, 469-71 (3d Cir. 2011).
[8] *Id.*

term success for struggling licensees or new entrants. That proposition seems unlikely, given that the Order does not even require that the incubated entity be more financially secure when the incubation program ends. The incubating entity is free to walk away from the program after three years, regardless of the position of the incubated entity, with a multiple ownership rule waiver in hand.

Thus, the incubated entity is clearly the party that stands to benefit the most from the incubator relationship. All it has to do provide some vague notion of "operational support" for three years to another broadcaster, and then it retains the real prize of the program, the multiple ownership rule waiver. The Commission itself conceded that the parties that ultimately choose to participate in the program will likely be at or near the ownership limits. With the larger broadcasters poised to get even larger, it is inconceivable that the Order will benefit competition.

Furthermore, basic economics dictate that increased media consolidation will lead to higher prices for advertising. An owner of multiple stations often programs each station to target the same demographic to corner a market, which results in new entrants being unable to target that same demographic and compete for advertising. The media consolidation that took place following the enactment of the 1996 Act illustrated this concept perfectly. Decreased ownership limits allowed Chancellor Media to acquire five radio stations in New York City and devote four of them to women of differing age groups.[9] CBS Radio followed suit, acquiring 35% of the New York City market for male listeners by programming its stations with sports and rock music.[10] Granting large broadcasters multiple ownership waivers is all but certain to result in a similar phenomenon.

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[9] Matthew Schifrin, *Radio-active Men*, FORBES, 130-134 (June 1, 1998).
[10] *Id.*

For the reasons stated above, Petitioner requests that the Commission reconsider and abandon it incubator program as adopted in the Order.

RED BRENNAN GROUP

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